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May 19, 2006

Municipal Stormwater NPDES Phase II Comments
Water Quality Program, WA Dept. of Ecology
PO Box 47696
Olympia, WA 98504-7696

Attention: Bill Moore

Dear Mr. Moore:

On behalf of the Association of Washington Cities (AWC) and the ninety-seven cities across Washington that are impacted by decisions your Agency makes about the NPDES Phase II Municipal Stormwater permit, I want to extend our thanks to you and all staff involved in the multi-year effort to prepare the Eastern and Western Washington DRAFT permits. This has been a major undertaking and cities have appreciated your cooperation and willingness to answer questions, provide information and engage in discussions about these permits.

AWC has provided a number of comments throughout this multi-year effort, as well as assisted Ecology in providing training for local officials. Several cities impacted directly by these permits are providing detailed and specific comments on the permits. Many more are relying on these more engaged and sophisticated cities to provide comments about permit specifics – in large part because they neither have the staff, expertise or time to delve in to all the details and issues.

AWC has been working closely with a representative group of Stormwater Managers from Western Washington cities and has generally kept up to date on issues identified by key impacted cities in Eastern Washington. AWC has been provided with copies of comments from Bellevue, Federal Way and Port Angeles and at this time, extends our support for and endorsement of the excellent comments made by those cities.

In a letter to Ecology Director Jay Manning in the summer of 2005, AWC conveyed our strong desire about having a Phase II permit that offers impacted cities coverage and legal certainty regarding stormwater, and gives them appropriate and achievable guidance on how to meet their environmental stewardship responsibilities. At that time, AWC expressed concerns about a number of permit topics or conditions – some of which have moved closer to resolution, and some that have not.

We appreciate the ongoing discussions and exchange of views between cities and Ecology on these matters. We trust that they can and will continue after this date and prior to the issuance of any final permits.

Generally, city concerns have and continue to focus on the following topics:

Monitoring: For a number of months, representative Phase II Western Washington cities have been discussing their concerns with the proposed monitoring provisions in their draft permit. They have shared, in considerable detail, concerns about data collection, analysis and cost implications – as well as whether the proposed programs would actually result in providing useful information to either Ecology, cities or others interested in measuring the

success or failure of city efforts. These representative cities developed and proposed an alternative approach and submitted it to Ecology for review and consideration. That alternative remains on the table and cities respectfully request that discussions continue and conclude on how or if it should be incorporated in the permit. Specific suggestions on how to proceed are included in Bellevue and Federal Way's letters.

Development and Redevelopment of Urban Sites: Cities are very concerned that requirements will be placed in the permits that require stormwater run-off to be managed to match what would have occurred if a site was in a pristine, pre-European settlement condition. Most properties within the impacted cities – those that are urban or urbanizing and that are developed at densities of 1,000 or more people per square mile (i.e., the “trigger” in Federal Statutes placing cities either “in or out” of Phase II NPDES requirements), are not in such a physical state and haven't been for a long time. We appreciate the need and desire to manage urban stormwater run-off, but it must be done in a manner that balances the needs of property owners, the environment and those charged with operating the stormwater program.

To emphasize this point, it doesn't appear to cities that the Federal Clean Water Act December 8, 1999 Federal Register Phase II rules (page 68761) require or support what is being proposed in this permit.

“Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.”

Again, representative Phase II Western Washington cities have described and discussed this issue in detail with Ecology. We hope and expect that discussion will continue on how to resolve a potentially critical conflict that if not resolved, will likely result in prolonged litigation.

Ecology Stormwater Manual – Guidance or Requirement: As stated in Federal Way's comment letter . . . “The permit requires application of the 2005 Stormwater Management Manual for Western Washington (Manual) at least in part and depending on interpretation, in whole. Requirements to use the Ecology manual through the permit is contrary to a previous determination by Ecology that the manual is a guidance document only (see attached Policy Statement from Ecology). We believe that inclusion by reference can be interpreted to mean the 2005 Manual is now a full, legal part of the permit thereby avoiding the rule making process Ecology needs to follow if it is to be anything other than guidance. While the permit does allow for an alternative to be used, we believe the burden of proof is too great and that the alternative will still be compared to the 2005 Manual leading to a de facto implementation of Ecology's 2005 Manual through the permit.”

Many cities now use this Manual and should have that choice. Similarly, Eastern Washington Cities were very involved in the development of their particular Manual, but it too is guidance and not a rule.

“Bubble Cities”: As pointed out in comments from the City of Port Angeles (a so-called “bubble city”), they aren't specifically required to implement a Phase II NPDES program. Ecology has discretion on whether they, or 9 other “bubble cities” must comply. In addition to Port Angeles, the Western Washington cities of Aberdeen, Anacortes, Centralia and Oak Harbor are ones not within a census-defined Urban Area. Neither are the Eastern Washington Cities of Ellensburg, Moses Lake, Pullman, Sunnyside or Walla Walla. Ecology has chosen, as it is their discretion, to include them along with the 87 other Phase II federally mandated cities.

There are obvious pro and con positions about whether to include them or not. Phase II NPDES cities will shoulder a significant financial and technical burden to meet their permit obligations. If requirements or conditions in excess of those required by the Federal Statutes are added, the burdens become even greater. AWC requests that Ecology re-evaluate the need to include these “bubble cities” in the permit at this time. Ecology doesn't have the staff, resources or experience on how to manage and provide assistance to 87 new Phase II permitted cities, let alone an additional 10. It is our understanding that they could be considered for inclusion at a later date.

Permit Issuance Timing: Ecology has published its intent to review and consider draft permit comments and then issue a final permit in the fall of 2006. Ecology has acknowledged that some of the permit conditions it is proposing and may consider, go beyond what is required under the Federal Clean Water Act – the basis of Phase II NPDES permit authority that the Legislature has delegated to Ecology.

Over the past several years as Ecology has worked on developing these permits, AWC has, and again states, that cities will bear the responsibility and costs for permit implementation for those items required by the Federal Clean Water Act – what are commonly referred to as the Six “Minimum Control Measures”:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Run-off Control
- Post-Construction Run-off Control
- Pollution Prevention/Good Housekeeping

If Ecology chooses to include ADDITIONAL measures and requirements, AWC believes that the Legislature should review and consider what they are, how much they will cost and what they will achieve. No such review has been conducted, nor has there been an opportunity to at least brief the relevant Legislative Committees on the details and issues surrounding these permits.

While it's important to finalize the permits and get them implemented over the coming years, it's equally important that permits are able to be successfully implemented – both from an administrative, fiscal and operational standpoint. We have discussed with Ecology our desire to allow the Legislature an opportunity to review and evaluate these permits PRIOR to their final issuance. We now formally request that such an opportunity be provided.

Thank you for the opportunity to provide these general comments. On behalf of Washington's Phase II NPDES (or potential) cities, we look forward to continuation of our dialogue on these and other matters in advance of issuance of final permits.

Respectfully,

David B. Williams
Municipal Policy Associate
Association of Washington Cities